



February 29, 2016

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## ENGROSSED SENATE BILL No. 146

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DIGEST OF SB 146 (Updated February 29, 2016 11:52 am - DI 107)

**Citations Affected:** IC 3-13; IC 34-13; IC 36-4.

**Synopsis:** Tort claims immunity and city legislative body vacancies. Provides that the tort claims act applies to a claim against certain approved postsecondary educational institutions if: (1) the institution has complied with certain data sharing requirements; and (2) the claim relates to a breach of this data. Provides that a claim or suit in tort against a postsecondary educational institution filed before March 30, 2016, is not eligible for tort claims immunity. Establishes a procedure by which the legislative body of a second or third class city may provide for the appointment of an acting member of the legislative body if a member of the legislative body is unable to perform the duties of the member's office. (Under current law, the legislative body has the power only to declare the member's seat vacant.)

**Effective:** Upon passage; July 1, 2011 (retroactive).

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### Charbonneau, Bray, Buck

(HOUSE SPONSORS — FRIEND, PORTER)

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January 5, 2016, read first time and referred to Committee on Civil Law.  
January 12, 2016, amended, reported favorably — Do Pass.  
January 14, 2016, read second time, ordered engrossed. Engrossed.  
January 19, 2016, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 8, 2016, read first time and referred to Committee on Judiciary.  
February 29, 2016, amended, reported — Do Pass.

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ES 146—LS 6427/DI 106





February 29, 2016

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 146

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 3-13-11-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **(a)** The caucus  
3 procedure prescribed by this chapter ~~for filling vacancies in local~~  
4 ~~offices~~ must be followed whenever:

5 **(1)** required by IC 3-13-6-2, IC 3-13-6-3(a), IC 3-13-7-1,  
6 IC 3-13-8-1, IC 3-13-9-1, or IC 3-13-10-1 **for filling vacancies in**  
7 **local offices;**

8 **(2) IC 5-9-4 requires an officeholder's office to be filled by**  
9 **temporary appointment; or**

10 **(3) IC 36-4-6-6.5 requires a member's office to be filled by**  
11 **temporary appointment.**

12 **(b)** Selections made under this chapter (or under IC 3-2-9 before its  
13 repeal on March 4, 1986) are appointments pro tempore for the  
14 purposes of Article 2, Section 11 of the Constitution of the State of  
15 Indiana.

16 SECTION 2. IC 34-13-3-2, AS AMENDED BY P.L.145-2011,  
17 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2011 (RETROACTIVE)]; Sec. 2. This chapter applies to a  
2 claim or suit in tort against any of the following:

3 (1) A member of the bureau of motor vehicles commission  
4 established under IC 9-15-1-1.

5 (2) An employee of the bureau of motor vehicles commission who  
6 is employed at a license branch under IC 9-16, except for an  
7 employee employed at a license branch operated under a contract  
8 with the commission under IC 9-16.

9 (3) A member of the driver education advisory board established  
10 by IC 9-27-6-5.

11 **(4) An approved postsecondary educational institution (as**  
12 **defined in IC 21-7-13-6(a)(1)) that:**

13 **(A) shares data with the commission for higher education**  
14 **under IC 21-12-12-1; and**

15 **(B) is named as a defendant in a claim or suit in tort based**  
16 **on any breach of the confidentiality of the data that occurs**  
17 **after the institution has transmitted the data in compliance**  
18 **with IC 21-12-12-1.**

19 SECTION 3. IC 34-13-3-2.5 IS ADDED TO THE INDIANA CODE  
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
21 1, 2011 (RETROACTIVE)]; **Sec. 2.5. The addition of section 2(4) of**  
22 **this chapter by SEA 146-2016, SECTION 1, does not apply to a**  
23 **claim or suit in tort against a postsecondary educational institution**  
24 **if filed before March 30, 2016.**

25 SECTION 4. IC 36-4-6-6 IS AMENDED TO READ AS FOLLOWS  
26 [EFFECTIVE UPON PASSAGE]; Sec. 6. **(a) The legislative body may**  
27 **do any, or any combination, of the following:**

28 (1) Expel any member for violation of an official duty.

29 (2) ~~Declare the seat of any member vacant~~ **If he a member is**  
30 **unable to perform the duties of his the member's office, and the**  
31 **legislative body may:**

32 **(A) declare the member's seat vacant; or**

33 **(B) act under section 6.5 of this chapter.**

34 ~~(3)~~ **(b) The legislative body may adopt its own rules to govern**  
35 **proceedings under this section.**

36 ~~However,~~ **(c) A two-thirds (2/3) vote of the legislative body is**  
37 **required to expel a member under subsection (a)(1) or vacate his the**  
38 **member's seat under subsection (a)(2)(A).**

39 SECTION 5. IC 36-4-6-6.5 IS ADDED TO THE INDIANA CODE  
40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
41 UPON PASSAGE]; **Sec. 6.5. (a) For purposes of this section, a**  
42 **member has a "disability" if the member is unable to perform the**



1 duties of the member's office. For purposes of this section, the term  
2 "disability" may include one (1) or more of the following  
3 conditions:

4 (1) A member's incarceration.

5 (2) A member's physical incapacitation.

6 (3) A member's impaired intellectual functioning due to  
7 physical illness, psychiatric illness, or injury.

8 (b) A member must be unable to perform the duties of the  
9 member's office for a continuous period of ninety (90) days or  
10 more before the member with a disability may be replaced. A  
11 member with a disability may be replaced by:

12 (1) expulsion;

13 (2) temporary appointment; or

14 (3) the vacating of the member's seat.

15 (c) If a member of the legislative body is unable to perform the  
16 duties of the member's office and the legislative body determines  
17 to act under this section, the clerk shall report to the legislative  
18 body regarding the member as directed by the legislative body. The  
19 clerk's report must include a description of the circumstances of  
20 the member's disability, including the nature and extent of the  
21 disability.

22 (d) After receiving the clerk's report under this section, the  
23 legislative body may adopt a resolution finding that:

24 (1) the member has a disability and should be expelled;

25 (2) the member has a disability and should be succeeded with  
26 a temporary appointment; or

27 (c) the member has a disability and the member's seat should  
28 be declared vacant.

29 (e) If the legislative body adopts a resolution under subsection  
30 (c), the clerk shall give the circuit court clerk notice of adoption of  
31 the resolution not later than five (5) days after the legislative body  
32 adopts the resolution. The circuit court clerk shall give notice of  
33 the resolution to the person who has the power to call a caucus  
34 under IC 3-13-11. After receiving notice under this subsection, the  
35 person who has the power to call a caucus under IC 3-13-11 shall  
36 call a caucus as provided in IC 3-13-11.

37 (f) A member with a disability does not vacate the member's  
38 office if the legislative body adopts a resolution under subsection  
39 (d)(2). However, the member with a disability is not entitled to the  
40 compensation established for a member of the legislative body  
41 during the period of the member's disability.

42 (g) During a member's disability, the member's office must be



1 exercised by a temporary appointment made under IC 3-13-11 if:

- 2 (1) the member with a disability is not expelled; and  
 3 (2) the seat of the member with a disability is not declared  
 4 vacant.

5 (h) The individual who has a temporary appointment as  
 6 provided in this section serves until the earlier of:

- 7 (1) the date the member's disability ends as provided in  
 8 subsection (j); or  
 9 (2) the member's term of office expires.

10 (i) The individual who has a temporary appointment under this  
 11 section:

- 12 (1) serves as an acting member of the legislative body;  
 13 (2) assumes all the powers and duties of a member of the  
 14 legislative body; and  
 15 (3) is entitled to the compensation established for a member  
 16 of the legislative body;

17 for the period of the temporary appointment.

18 (j) A member whose disability has ended may give notice to the  
 19 clerk that the member's disability has ended. A notice under this  
 20 subsection must be in writing. The clerk shall report to the  
 21 legislative body the receipt of the member's notice at the meeting  
 22 of the legislative body that first occurs after the clerk receives the  
 23 notice.

24 (k) A member's disability ends after the member gives notice  
 25 under subsection (j) if the legislative body adopts a resolution  
 26 finding that the member's disability has ended.

27 (l) If the legislative body adopts a resolution under subsection  
 28 (k), the following apply upon the adoption of the resolution, if the  
 29 member's term of office has not expired:

- 30 (1) The member shall resume the duties of the member's office  
 31 for the remainder of the term to which the member was  
 32 elected.  
 33 (2) The member has all the powers of a member of the  
 34 legislative body.  
 35 (3) The member is entitled to the compensation as a member  
 36 of the legislative body.  
 37 (4) The temporary appointment of the individual under  
 38 subsection (g) ends.

39 SECTION 6. An emergency is declared for this act.



## COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 146, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 7.

Page 2, delete lines 3 through 4, begin a new line block indented and insert:

**"(4) An approved postsecondary educational institution (as defined in IC 21-7-13-6(a)(1)) that:**

**(A) shares data with the commission for higher education under IC 21-12-12-1; and**

**(B) is named as a defendant in a claim or suit in tort based on any breach of the confidentiality of the data that occurs after the institution has transmitted the data in compliance with IC 21-12-12-1."**

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 146 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 146, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 3-13-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The caucus procedure prescribed by this chapter ~~for filling vacancies in local offices~~ must be followed whenever:

**(1) required by IC 3-13-6-2, IC 3-13-6-3(a), IC 3-13-7-1, IC 3-13-8-1, IC 3-13-9-1, or IC 3-13-10-1 for filling vacancies in local offices;**

**(2) IC 5-9-4 requires an officeholder's office to be filled by**

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**temporary appointment; or**

**(3) IC 36-4-6-6.5 requires a member's office to be filled by temporary appointment.**

**(b)** Selections made under this chapter (or under IC 3-2-9 before its repeal on March 4, 1986) are appointments pro tempore for the purposes of Article 2, Section 11 of the Constitution of the State of Indiana."

Page 1, line 3, delete "JULY 1, 2016]:" and insert "JULY 1, 2011 (RETROACTIVE)]:".

Page 2, after line 3, begin a new paragraph and insert:

"SECTION 3. IC 34-13-3-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011 (RETROACTIVE)]: **Sec. 2.5. The addition of section 2(4) of this chapter by SEA 146-2016, SECTION 1, does not apply to a claim or suit in tort against a postsecondary educational institution if filed before March 30, 2016.**

SECTION 4. IC 36-4-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. **(a)** The legislative body may **do any, or any combination, of the following:**

- (1) Expel any member for violation of an official duty.
- (2) ~~Declare the seat of any member vacant If he a member is unable to perform the duties of his the member's office, and the legislative body may:~~

**(A) declare the member's seat vacant; or**

**(B) act under section 6.5 of this chapter.**

~~(b)~~ **(b)** The legislative body may adopt its own rules to govern proceedings under this section.

~~However;~~ **(c)** A two-thirds (2/3) vote of the legislative body is required to expel a member **under subsection (a)(1)** or vacate ~~his the~~ **member's seat under subsection (a)(2)(A).**

SECTION 5. IC 36-4-6-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.5. (a) For purposes of this section, a member has a "disability" if the member is unable to perform the duties of the member's office. For purposes of this section, the term "disability" may include one (1) or more of the following conditions:**

- (1) A member's incarceration.**
  - (2) A member's physical incapacitation.**
  - (3) A member's impaired intellectual functioning due to physical illness, psychiatric illness, or injury.**
- (b) A member must be unable to perform the duties of the**





member's office for a continuous period of ninety (90) days or more before the member with a disability may be replaced. A member with a disability may be replaced by:

- (1) expulsion;
- (2) temporary appointment; or
- (3) the vacating of the member's seat.

(c) If a member of the legislative body is unable to perform the duties of the member's office and the legislative body determines to act under this section, the clerk shall report to the legislative body regarding the member as directed by the legislative body. The clerk's report must include a description of the circumstances of the member's disability, including the nature and extent of the disability.

(d) After receiving the clerk's report under this section, the legislative body may adopt a resolution finding that:

- (1) the member has a disability and should be expelled;
- (2) the member has a disability and should be succeeded with a temporary appointment; or
- (c) the member has a disability and the member's seat should be declared vacant.

(e) If the legislative body adopts a resolution under subsection (c), the clerk shall give the circuit court clerk notice of adoption of the resolution not later than five (5) days after the legislative body adopts the resolution. The circuit court clerk shall give notice of the resolution to the person who has the power to call a caucus under IC 3-13-11. After receiving notice under this subsection, the person who has the power to call a caucus under IC 3-13-11 shall call a caucus as provided in IC 3-13-11.

(f) A member with a disability does not vacate the member's office if the legislative body adopts a resolution under subsection (d)(2). However, the member with a disability is not entitled to the compensation established for a member of the legislative body during the period of the member's disability.

(g) During a member's disability, the member's office must be exercised by a temporary appointment made under IC 3-13-11 if:

- (1) the member with a disability is not expelled; and
- (2) the seat of the member with a disability is not declared vacant.

(h) The individual who has a temporary appointment as provided in this section serves until the earlier of:

- (1) the date the member's disability ends as provided in subsection (j); or



**(2) the member's term of office expires.**

**(i) The individual who has a temporary appointment under this section:**

- (1) serves as an acting member of the legislative body;**
- (2) assumes all the powers and duties of a member of the legislative body; and**
- (3) is entitled to the compensation established for a member of the legislative body;**

**for the period of the temporary appointment.**

**(j) A member whose disability has ended may give notice to the clerk that the member's disability has ended. A notice under this subsection must be in writing. The clerk shall report to the legislative body the receipt of the member's notice at the meeting of the legislative body that first occurs after the clerk receives the notice.**

**(k) A member's disability ends after the member gives notice under subsection (j) if the legislative body adopts a resolution finding that the member's disability has ended.**

**(l) If the legislative body adopts a resolution under subsection (k), the following apply upon the adoption of the resolution, if the member's term of office has not expired:**

- (1) The member shall resume the duties of the member's office for the remainder of the term to which the member was elected.**
- (2) The member has all the powers of a member of the legislative body.**
- (3) The member is entitled to the compensation as a member of the legislative body.**

**(4) The temporary appointment of the individual under subsection (g) ends.**

**SECTION 6. An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 146 as printed January 13, 2016.)

STEUERWALD

Committee Vote: yeas 11, nays 0.

